

## MINUTES

### ALCOHOL AND TOBACCO COMMISSION

SEPTEMBER 16, 2008

#### CALL TO ORDER/NOTING OF QUORUM

Chairman Heath called the meeting to order and noted the quorum and the attendance. Present were Vice Chairman Johnson, Commissioner Sturtz and Commissioner Guthrie. Also in attendance were Executive Secretary Choe and Superintendent Huskey.

Deb Scott, T. Vance, and Nicole Upano were present as observers.

#### DISPOSITION OF MINUTES

Commissioner Sturtz moved to approve the minutes that were submitted for the September 2, 2008 meeting. Motion seconded by Commissioner Guthrie and it was unanimously approved.

#### HEARING JUDGE'S RECOMMENDATIONS

PAD FORMS – Vice Chairman Johnson moved to approve the parties agreed disposition forms that were submitted for the September 16, 2008 meeting. Motion seconded by Commissioner Guthrie and it was unanimously approved.

TC02067001 M. REDA MOSSA-BASHA, D/B/A SHELL PETROLEUM – Hearing Judge Choe found that this certificate holder violated IC 35-46-1-10.2 and IC 7.1-3-18.5-9 and set forth the following disposition: \$100.00 fine and training for employees that covers laws governing the sale of tobacco products, methods of recognizing customers who are under the age of 18 and procedures for proper examination of identification cards to verify age of customer. The Hearing Judge also requested the Commission amend the disposition by adding the language, "The following training shall be instituted within 30 days of the final disposition."

Vice Chairman Johnson moved to uphold the Hearing Judge's findings, including the amendment. Motion seconded by Commissioner Sturtz and it was unanimously approved.

#### CONSIDERATION OF APPLICATIONS

I incorporate by reference these lists of permits for renewal, which have been recommended by local boards and reviewed by said staff with the authority of the Commission, and hereby move for approval of same and the inclusion of these lists as part of the minutes by exhibit. Motion seconded by Commissioner Guthrie and it was unanimously approved.

I incorporate by reference these lists of permit applications for a new permit or application for changes in location or ownership or both of existing permits, which have

been recommended by local boards and reviewed by at least two Commissioners and hereby move for approval of same and inclusion of these lists as part of the minutes by exhibit. Motion seconded by Commissioner Guthrie and it was unanimously approved.

I incorporate by reference these lists of permit applications for catering and hereby move for approval of same and the inclusion of these lists as part of the minutes by exhibit. Motion seconded by Commissioner Guthrie and it was unanimously approved.

I incorporate by reference these lists of permits to be placed in escrow for not more than one year, which have been reviewed and recommended by a Commissioner as appropriate for first or second year escrow and hereby move for approval of same and the inclusion of these lists as part of the minutes by exhibit. Motion seconded by Commissioner Guthrie and it was unanimously approved.

Four hundred twenty (420) renewals approved, forty-two (42) new and/or transfer permits approved, nineteen (19) permits approved for catering, two (2) permits approved for first year escrow, six (6) permits approved for second year escrow, four (4) permits approved for third year escrow and two (2) permits approved for fifth year escrow.

### **RENEWAL LETTERS AND WAIVER OF FEES**

Vice Chairman Johnson moved to approve the renewal letters and the waiver of fees for letters of extension for the preceding weeks. Motion seconded by Commissioner Guthrie and it was unanimously approved.

### **APPLICATIONS FOR DISCUSSION**

DL45-24457 GATEWAY TRIANGLE CORPORATION – Chairman Heath noted this is a new type 115 application with the local board voting two (2) to one (1) to disapprove.

Commissioner Guthrie stated the only remonstrator present before the local board was the city attorney, who presented a city Resolution regarding gas stations selling alcoholic beverages.

Commissioner Guthrie moved to overturn the local board and approve the new permit. Motion seconded by Commissioner Sturtz and it was unanimously approved.

DL49-24230 HERDRICH PETROLEUM CORPORATION – Chairman Heath noted this is a new type 116 application with the local board voting three (3) to zero (0) to approve.

Commissioner Guthrie moved to uphold the local board and approve the new permit. Motion seconded by Vice Chairman Johnson and it was unanimously approved.

RR12-24055 TIMOTHY A. SNELL, SR., & BETTY P. SNELL – Chairman Heath noted this is a new type 210 application with the local board voting four (4) to zero (0) to approve.

Commissioner Guthrie moved to uphold the local board's recommendation and approve the new permit. Motion seconded by Commissioner Sturtz and it was unanimously approved.

RR33-24480 ROSE CITY BOWL, INC. – Chairman Heath noted this is a new type 112 application with the local board voting four (4) to zero (0) to approve.

Commissioner Guthrie moved to uphold the local board's recommendation and approve the new permit. Motion seconded by Vice Chairman Johnson and it was unanimously approved.

W 22-25148 AND W 22-25149 SOUTHERN WINE & SPIRITS OF INDIANA – Commissioner Guthrie moved to table this matter for further investigation. The applicant appears to not qualify for a liquor wholesaler permit, pursuant to statute, but does qualify for the wine wholesaler permit. Motion seconded by Commissioner Sturtz and it was unanimously approved.

### **INACTIVE FILES**

PERMITS MADE INACTIVE – Vice Chairman Johnson moved to make three (3) permits inactive. All three (3) permits are not subject to auction. Motion seconded by Commissioner Guthrie and it was unanimously approved.

### **OLD BUSINESS**

No Old Business

### **NEW BUSINESS**

DL40-23860 WAL-MART STORES EAST LP

Chairman Heath – DL40-23860 Wal-Mart Stores East LP. Motion for Change of Hearing Officer.

Commissioner Guthrie – This attorney also filed a motion to review the hearing officer's ruling on the certification of his clients' and intervening parties. His reason for the motion for change of hearing officer is that he disagrees with her prior rulings on similar cases, which is no grounds at all for disqualifying a hearing officer. Deny his motion for change of hearing officer and also deny his motion for us to review his motion on interveners, because that's part of the appeal process and it will come before us at a later time. So, I move to deny both motions.

Commissioner Sturtz – Second.

Chairman Heath – All in favor.

Commissioner Guthrie – Aye.

Commissioner Sturtz – Aye.

Vice Chairman Johnson – Aye.

Chairman Heath – Aye.

READOPTED OF RULES – Executive Secretary Choe stated, 905 IAC 1-8; 905 IAC 1-16.1-1; 905 IAC 1-23-1; 905 IAC 1-29-1 through 1-29-7 and 905 IAC 1-52, will expire at the end of 2008. She asked the Commission to readopt these rules.

Commissioner Guthrie moved to readopt the expiring rules. Motion seconded by Commissioner Sturtz and it was unanimously approved.

### **POLICY DETERMINATIONS**

No Policy Determinations

### **ANNOUNCEMENTS**

No Announcements

### **ADJOURNMENT**

Commissioner Sturtz moved to adjourn the meeting. Motion seconded by Commissioner Guthrie and it was unanimously approved.

Approved this \_\_\_\_\_ day of \_\_\_\_\_, 2008.

\_\_\_\_\_  
DAVE HEATH, CHAIRMAN

\_\_\_\_\_  
DAVID JOHNSON, VICE CHAIR

\_\_\_\_\_  
DALE STURTZ, COMMISSIONER

\_\_\_\_\_  
FRANK GUTHRIE, COMMISSIONER